

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARCAS, L.L.C.,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF
ST. MARY'S COUNTY,

Defendant.

No. 8:07-cv-00196-WGC

[PROPOSED] ORDER AND INJUNCTION

In its Memorandum Opinion and Order dated July 25, 2013, which are incorporated herein by reference, the Court granted summary judgment in favor of Plaintiff Marcas, L.L.C. ("Marcas") on Count VI of the Third Amended Complaint, which was brought under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(A), regarding Defendant Board of County Commissioners of St. Mary's County's (the "County") violation of 40 C.F.R. § 258.23(a)(2). *See* ECF No. 172 at 26; ECF No. 173 at 2. The Court found that "methane gas continues to exceed the LEL [lower explosive limit] at the boundary of St. Andrew's Landfill i[n] violation of 40 C.F.R. § 258.23(a)(2)," and that "a mandatory injunction is warranted and appropriate" to abate and remediate the migration of methane gas onto Marcas's property. ECF No. 172 at 25-26.

RCRA provides that, in a citizen suit, a district court "shall have jurisdiction" to enforce the regulation that is being violated, to order the violator "to take such other action as may be necessary," and "to apply any appropriate civil penalties under [42 U.S.C. §§] 6928(a) and (g)." 42 U.S.C.

§ 6972(a). RCRA's penalty provisions allow a district court to assess a civil penalty of up to \$37,500 per day of noncompliance. *See* 42 U.S.C. §§ 6928(a) and (g), as amended by 40 C.F.R. § 19.4.

Therefore, in accordance with the Court's Memorandum Opinion and Order of July 25, 2013 and Fed. R. Civ. P. 65(d), the Court hereby ORDERS and ENJOINS the County as follows:

1. The County shall continue its current remedial action plan to achieve compliance with 40 C.F.R. § 258.23(a)(2) and abate and remediate the migration of methane gas from the St. Andrew's Landfill onto Marcos's property.

2. The County shall implement all recommendations set forth in the Maryland Environmental Service's Assessment of Corrective Measures, including the installation of additional out-of-waste gas extraction wells, trenches, or other mechanisms to intercept methane gas, in an alignment along the northern and eastern boundaries of the St. Andrew's Landfill that border Marcos's property. *See* ECF No. 172 at 23-24.

3. The County shall "take such other action as may be necessary," 42 U.S.C. § 6972(a), to achieve compliance with 40 C.F.R. § 258.23(a)(2) and abate and remediate the migration of methane gas from the St. Andrew's Landfill onto Marcos's property.

4. Because the RCRA violations in this case are serious, they have continued for more than a decade, and the County has not implemented all available measures to achieve compliance with 40 C.F.R. § 258.23(a)(2) and abate and remediate the migration of methane gas onto Marcos's property, *see* ECF No. 172 at 23-26, in accordance with 42 U.S.C. §§ 6972(a), 6928(a), and 6928(g), the County shall be liable to the United States for a civil penalty of \$_____ per day. Such penalty shall apply effective as of _____ (the "effective date"), and shall be assessed each day from the effective date until the County demonstrates that the St. Andrew's Landfill is no longer in violation of 40 C.F.R. §

258.23(a)(2) and the County has abated and remediated the migration of methane gas from the St. Andrew's Landfill onto Marcos's property.

5. In the event that the County fails to achieve compliance with 40 C.F.R. § 258.23(a)(2) and to abate and remediate the migration of methane gas from the St. Andrew's Landfill onto Marcos's property within one year from the entry of this Order and Injunction, the Court may order additional injunctive relief, including but not limited to requiring the County to retain a third-party, at the County's expense, to take such other action as may be necessary to achieve compliance with 40 C.F.R. § 258.23(a)(2) and to abate and remediate the migration of methane gas from the St. Andrew's Landfill onto Marcos's property.

6. This Order and Injunction shall remain in effect unless otherwise ordered by the Court.

SO ORDERED this _____ day of _____, 2013.

/s/
WILLIAM CONNELLY
UNITED STATES MAGISTRATE JUDGE